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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

VIA FACSIMILE AND U.S. MAIL

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Qualcomm Inc.  
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RE: Qualcomm Incorporated, WTB Docket No. 99-168/DA 00-219

Dear Ms. Ahern and Mr. Kelley:

Commission staff and Qualcomm have held discussions regarding possible actions the Commission could take to satisfy the mandate of the D.C. Circuit in the litigation regarding the Commission's failure to grant Qualcomm a pioneer's preference.<sup>1</sup> Because we have been unable to reach an agreement on suitable spectrum to satisfy the Court's mandate, we have discussed how best to resolve this dispute and move forward "forthwith," as directed by the Court. Specifically, these discussions have focused on the option of a Commission award to Qualcomm of a transferable auction discount voucher (ADV) that Qualcomm could use, subject to the terms and conditions described below, in any of the Commission's upcoming spectrum auctions.<sup>2</sup> We appear to have reached an agreement in principle as to the terms and conditions by which such a voucher would operate. The purpose of this letter is to summarize those terms and conditions, which will form the basis of the staff's recommendation to the Commission regarding implementation of the Court's mandate.

<sup>1</sup> See *Qualcomm Inc. v. FCC*, 181 F.3d 1370 (D.C. Cir. 1999)

<sup>2</sup> We previously discussed this proposal with Qualcomm on March 13, 2000. See Letter from Veronica M. Ahern, attorney for Qualcomm, Inc. to Magalie R. Salas, Secretary, Federal Communications Commission (Qualcomm March 14, 2000 *Ex Parte* filing).

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### Amount of the ADV

The voucher should be calculated with the goal of placing Qualcomm in the position it would have been in had its original pioneer's preference application been granted. As we have discussed, Commission staff believe, and understand that Qualcomm agrees, that a voucher in the amount of \$125,273,878 would appropriately meet this goal.

This amount is equal to a Qualcomm estimate of the current value of the Miami MTA license, minus the amount that Qualcomm would have paid for the direct award of that license in 1994, adjusted to account for favorable payment terms that Qualcomm would have received as a pioneer. More specifically, Commission staff believe, based on our own analyses, that it is reasonable to use the \$186 million figure set forth in the PriceWaterhouseCoopers valuation study submitted by Qualcomm as the current value for the Miami MTA license for purposes of this calculation.

In applying the statutory payment formula set forth in 47 U.S.C § 309(j)(13) to determine what Qualcomm would have paid for a direct license award, it is reasonable to adjust for the fact that Seattle would have replaced Miami in the list of the top 20 markets used to make this calculation, had a pioneer's preference license for Miami been awarded to Qualcomm. With this adjustment, Qualcomm would have paid approximately \$13.27 per pop, or \$68,144,164 for the Miami MTA license (based on a 1990 population figure of 5,136,581).

It is also reasonable to adjust this payment figure to account for the five year installment payment terms Qualcomm would have received as a pioneer. Under these terms, Qualcomm would have made only quarterly interest payments for the first two years (at an interest rate of 7.75%) and then quarterly principal and interest payments for the remaining three years. When the resulting cash flows to the Commission are discounted at a market discount rate of 11.5%, the resulting present value of the payments that Qualcomm would have made to the Commission for the Miami MTA license is equal to \$60,726,122.

Thus, a reasonable amount for a voucher that would enable Qualcomm to obtain the equivalent of the Miami MTA license today, for the amount that it would have paid for the license if awarded in 1994, would be \$186,000,000 minus \$60,726,122 or \$125,273,878.

### Terms and Conditions for Use of the ADV

Consistent with the Commission's Pioneer's Preference regulations, Qualcomm and its transferees must use the voucher to build a system "that substantially uses the design and technologies upon which its preference is based."<sup>3</sup> As Qualcomm's original pioneer's preference application was based on development of Code Division Multiple Access (CDMA) technology for PCS, we would expect the voucher to be used for further development and application of CDMA-based technology.

We also have discussed the terms and conditions under which the ADV may be used in the Commission's auction process. First, Qualcomm would be able to use the voucher in any

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<sup>3</sup> Amendment of the Commission's Rules to Establish New Personal Communications Services, *Third Report and Order*, 9 FCC Rcd. 1337, 1339 (para. 8) (1994) (*Third Report and Order*).

spectrum auction over the course of the next three years. More specifically, Qualcomm may use the voucher in any auction in which FCC Form 175's have been accepted for three years from the date of issue of an order adopting this proposal. Second, Qualcomm may use the voucher either in whole or in part, and may use portions of the voucher in more than one auction or in conjunction with more than one license. Third, Qualcomm may transfer part or all of the voucher to a third party, for example, to a high bidder in a spectrum auction, in exchange for consideration determined by Qualcomm and the transferee. Qualcomm need not be a participant in any auction in order to transfer the voucher. Fourth, all of the terms and conditions applicable to Qualcomm's use of the voucher apply equally to its use by a transferee, except that a transferee may not transfer the voucher to another entity.

Further, the voucher may only be used to adjust a winning bid, and thus will only affect calculation of a related downpayment or final payment. The voucher may not be used for an upfront, "earnest money" payment, nor for withdrawal or default payments that may be incurred during the auctions process. Moreover, in using the voucher, Qualcomm will be subject to the Commission's general auctions procedures, set forth in 47 CFR § 1.2101 *et seq.* These include, but are not limited to, the short form disclosure and anti-collusion rules (47 CFR § 1.2105) and the ownership disclosure requirements (47 CFR § 1.2112). Qualcomm will also be subject to service-specific rules applicable to individual auctions in which the voucher may be used.

Under ordinary procedures, following the close of an auction, the Wireless Telecommunications Bureau (Bureau) issues a Public Notice announcing the winning bids. Long form applications and down payments are due 10 days after the Public Notice issues. Following receipt of long forms and down payments, the Bureau issues a Public Notice announcing the long forms that have been accepted for filing, and specifying the deadline for filing of petitions to deny. The Bureau then reviews and addresses petitions to deny, if any are filed. Following this, the Bureau issues a Public Notice that announces that it is ready to grant licenses. This "ready to grant" Public Notice states the final amount that must be paid in order for the Commission to grant the license, which is the amount it must report to the Treasury as federal revenue from the license.

At the latest, Qualcomm or a transferee must notify the Commission of its intent to use the voucher (and the amount of the voucher it intends to use) sufficiently before issuance of the "ready to grant" Public Notice so that use of the voucher can be reflected in the amount reported to the Treasury. The Commission will apply the voucher amount in a manner similar to a bidding credit, by computing an adjusted net bid amount. Qualcomm or its transferee must then pay the adjusted net bid amount, less downpayment, to the government in cash in order to obtain the license in question. Moreover, if Qualcomm or its transferee wishes to have its downpayment calculated based on the adjusted net bid (the bid amount minus the voucher amount to be applied), it must notify the Commission of its intent to use the voucher *before* the downpayment is due. If such notification is not made before the downpayment is due, Qualcomm or its transferee must pay the full downpayment based on its gross high bid amount. In no event will the Commission reimburse Qualcomm or any transferee for any "overpayment" of a downpayment amount.

We are encouraged that our recent discussions will enable us to satisfy the court's mandate regarding this litigation in an expedient, and mutually satisfactory, manner. If Qualcomm is willing to accept Commission adoption of the recommendation set forth in this letter in full satisfaction of the Court's mandate, as an alternative to the relief requested in its January 28 Petition for Declaratory Ruling, we would ask that you confirm this position in writing at your earliest convenience.

Sincerely,

*James D. Schlichting / J.D.S.*  
James D. Schlichting  
Deputy Chief  
Wireless Telecommunications Bureau  
Federal Communications Commission